APR 1 1944
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 838

ARCH S. RHODES,

Petitioner,

vs.

THE FEDERAL LAND BANK OF ST. PAUL AND FEDERAL FARM MORTGAGE CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

WILLIAM LEMKE,
Counsel for petitioner.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary statement of matter involved	2
The statute	2
Issues involved	3
Decisions below	4
Statement of facts	4
Jurisdiction	8
Reasons relied on for allowance of writ	8
Prayer for writ	9
Brief in support of petition	10
Section 75	10
Decision of the Circuit Court contradictory	11
The correct rule	14
Cases supporting petitioner	15
Respondents' petition insufficient	17
Conclusions of law biased	19
Conclusion	21

Table of Cases Cited.

Burnett v. *Central*, 125 Fed. 836	8, 15
Casoudounceq, In re, 46 Fed. Supp. 718	3, 18
Charles Stone Florsheim, In re, 24 Fed. Supp. 991	18
Dunsdon v. *Federal Land Bank of St. Paul*, 137 F. (2d) 84	8, 16
Equitable v. *Carmody*, 131 F. (2d) 318	8, 15
Federal Land Bank v. *Castanien*, 116 F. (2d) 588	16
Fordyce v. *Railway Companies*, 145 Fed. 544	3, 8, 18
Gustave Schafer Co., 163 F. (2d) 137	8
Humphrey's Gold Corporation v. *Lewis*, 90 F. (2d) 896	18
Hecht v. *Alfaro*, 10 F. (2d) 464	18
Kowalaky v. *American Employer's Ins. Co.*, 90 F. (2d) 476	3, 8, 17
Newman v. *Gresley*, 77 F. (2d) 252	15
Newman v. *Burnham*, 126 F. (2d) 336	15

Page

Pfister v. *Northern Illinois*, 317 U. S. 144, 63 Sup. Ct. 133, 87 L. Ed. 123 16
Rait v. *Federal Land Bank of St. Paul*, 135 F. (2d) 447 14
Rasmussen v. *Greslay*, 77 F. (2d) 252 ..... 3, 15
Samuelson v. *Central*, 125 F. (2d) 838 8
Schmidt v. *Beiseker*, 120 N. W. 35 7
Stitzer Hotel Company, In re, 29 F. (2d) 571 8
Virginia Railway Company v. *Chambers*, 46 F. (2d) 20 ..... 3, 18

STATUTES CITED.

Act of February 13, 1925, Sec. 8(a), 28 U. S. C. 350 8
Bankruptcy Act, Sec. 75, 11 U. S. C. 203 2
Bankruptcy Act, Sec. 75(s)(3), 11 U. S. C. 203( )(3) 8
General Orders in Bankruptcy 47 and 50 ..... 2, 12
Judicial Code, as amended (28 U. S. C. A. 347(a)) 8, 9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 838

ARCH S. RHODES,

Petitioner,

vs.

THE FEDERAL LAND BANK OF ST. PAUL AND FEDERAL FARM MORTGAGE CORPORATION,

Respondents.

PETITION AND BRIEF.

For Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

To the Honorable Harlan F. Stone, Chief Justice, and to the Associate Justices, of the Supreme Court of the United States:

Your petitioner, Arch S. Rhodes, respectfully petitions this Honorable Court for a writ of certiorari to review the decision and the judgment of the United States Circuit Court of Appeals for the Eighth Circuit, rendered in the above entitled cause on February 16, 1944, which decision

affirms the judgment of the United States District Court of North Dakota. This decision holds that the District Court may set aside the valuation of a farmer-debtor's real estate found by the supervising conciliation commissioner, who heard and saw the witnesses, and substitute its judgment for that of the commissioner under Section 75(s)(3). Paragraph (s)(3) provides for no review or appeal. The commissioner's findings are final unless clearly erroneous, fraudulent, or contrary to the evidence.

A Summary of the Matter Involved.

The Statute.

This case arises under Section 75 of the Bankruptcy Act, 11 U. S. C. 203, which relates to proceedings in connection with the rehabilitation of a farmer-debtor. The portion of the Statute involved is Section 75(s)(3) and General Orders 47 and 50 in bankruptcy. Section 75(s)(3) as far as here material reads:

> "(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less payments paid on principal: Provided, That upon request of any secured or unsecured creditor, or upon request of the debtor, *the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal*, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, *turn over full possession and title of said property, free and clear of encumbrances to the debtor:* * * *."

Issues Involved.

The questions here involved are:

1. Was the District Court justified in setting aside the valuation of a farmer-debtor's real estate as fixed by the supervising conciliation commissioner, who, upon hearing, saw and heard the witnesses testify? In other words, may a District Court overrule the finding of fact—or value—by the conciliation commissioner, and substitute its own judgment for that of the commissioner and arbitrarily double the value? This is the face of the fact that there was a conflict of evidence and that the great weight of evidence sustained the value placed upon petitioner's farm by the commissioner.

2. Was the respondents' petition for review in the District Court sufficient when the review was asked on the sole ground "That said order of the Supervising Conciliation Commissioner dated June 16, 1942, errs in that the value so fixed is not the present fair and reasonable market value according to the evidence submitted at said hearing?" R. 91. In other words, *should not the petition for review have been dismissed for the reason that it failed to point out wherein the supervising conciliation commissioner's findings were contrary to the evidence or contrary to the great weight of evidence or that there was a miscarriage of justice?*

Kowalaky v. *American Employer's Ins. Co.* 90 F. (2d) 476;

Fordyce v. *Railway Companies et al.,* (C. C. A.) 145 F. 544.

In re. Casoudounceq, 46 Fed. Sup. 718.

Virginia Railway Company v. *Chambers,* 4th Circuit, 46 Fed. (2d) 20.

Decisions Below.

The opinion of the Circuit Court of Appeals dated February 16, 1944, appears at R. 107 to 111. The final judgment of that Court appears at R. 111.

The findings of facts and conclusions of law of the District Court below appear at R. 92 to 98. The order denying the motion of the bankrupt to dismiss the petition for review, and setting aside the valuation, as fixed by the supervising conciliation commissioner, by the District Court below, appear at R. 99 and 100.

Statement of Facts.

The petitioner is a farmer-debtor under Section 75 of the Bankruptcy Act. He owns a farm of approximately 400 acres in Wells County, North Dakota. The respondents are the holders of a first and second mortgage on petitioner's farm. Petitioner was adjudged a bankrupt under Section 75(s) on the 29th day of March, 1940. R. 7. The Wells County conciliation commissioner appointed appraisers who appraised the petitioner's farm lands at $2,000, which appraisal was filed with the conciliation commissioner on or about the 25th day of November, 1940. R. 7 and 8. No objection or exception was filed or appeal taken within four months or at any other time from this appraisal.

On March 19, 1942, petitioner, in accordance with the provisions of Section 75(s) (3) paid into the District Court below the sum of $2,000, the amount of the appraisal, and petitioned the court that the same be accepted in full settlement and discharge of respondents' mortgages. R. 8 and 9.

The Court below referred that petition not to the Wells County conciliation commissioner, but, to its supervising conciliation commissioner at Fargo, North Dakota. Whereupon the supervising conciliation commissioner gave notice of a hearing to be held on June 2, 1942, in the courthouse at

New Rockford, Eddy County, North Dakota. Eddy County adjoins Wells County where the real estate in question is located. R. 11 and 12.

At this hearing, the respondents produced three witnesses. A Mr. Larson, a so-called Federal appraiser of the Farm Credit Administration, but, in fact an employee of one of the respondents if not both. R. 13 to 25. A Mr. Giedt, Secretary and Treasurer of several national farm loan associations, which associations are the local representatives of the respondent, The Federal Land Bank. R. 25 to 41. And a Mr. Adams, a local real estate man at Fessenden, North Dakota. R. 41 to 46.

Respondents' witnesses differed as to the value of petitioner's farm. Mr. Larson, the so-called Federal appraiser, the employee of the respondents, placed it at $4,800. R. 24. Mr. Giedt, the Secretary and Treasurer of respondents' local associations, placed it at $5,000. R. 38. And Mr. Adams, the real estate man, placed it at $5,500. R. 42. The value under their testimony increased progressively as the testimony continued. Apparently, the court's own supervising conciliation commissioner was not greatly impressed with their testimony.

On the other hand, the witnesses for the petitioner consisted of himself and four disinterested witnesses. None were his employees and none were paid by him to testify. They were people who lived in the locality and should know the value of farm land. Of course, the petitioner was interested, but, no more so than the employed witnesses of the respondents. The fact that one of these other witnesses had also filed under the Frazier-Lemke Act gave him no direct interest in the question under consideration.

Petitioner testified that a similar farm of 560 acres, 160 acres more than his own, was appraised and sold for $2000. This farm was the next section east of petitioner's. R. 48. While the lower court, in its findings of fact, placed con-

siderable *stress* upon sales testified to by respondents' witnesses, R. 95, it *failed* to give the *same* emphasis to sales testified to by *petitioner's* witnesses. The court did point out that one sale testified to by one of petitioner's witnesses was 24 miles away, but, it overlooked the testimony of petitioner and the other witnesses of sales made for far less of similar farms nearby or adjoining sections of petitioner's farm. R. 49, 50 and 51.

Petitioner's witness, Erman, a farmer and director of the Wells County National Farm Loan Association, who is familiar with petitioner's farm, placed a value on it of $1600 to $2000. R. 60. He pointed out other sales of similar farms in the community for less than he valued petitioner's. R. 61. The lower court when it set aside the conciliation commissioner's findings *overlooked* these sales. But, they were undoubtedly considered by the commissioner.

Julius Moe, who operates farms in the vicinity of petitioner's, testified that petitioner's farm was worth $5 an acre or $2000. R. 68. He also testified to other sales and offers for sale in support of his valuation. R. 69 and 70.

The next witness for petitioner, was James Winstrom. While also proceeding under the Frazier-Lemke Act he has no interest in this case. He was not a paid witness nor a so-called Federal appraiser working for respondents. He placed the value of petitioner's property at $5 an acre or $2000. He also testified to sales of land, some of which his own son bought, at a price less than $5 an acre. R. 72, 73 and 74.

The last witness for petitioner was a Mr. Garland, a farmer who lives five miles from petitioner's farm. This witness valued petitioner's farm at $2000. R. 77.

All of the petitioner's witnesses were people who lived in the locality of the land in question. They knew the value

from their knowledge of the community and from experience. They were competent to testify. They were disinterested farmers and peculiarly qualified to testify as to value. *Schmidt* v. *Beiseker* 120 N. W. 35. They were not like respondents' witnesses—experts.

They were not the kind of witnesses who through the ages have been the butt end of jokes among the legal profession. They were not so-called Federal appraisers. They were not brought in at a distance of 60 to 70 miles to value property they had seen once or twice. They were not in the employ of petitioner as were two of the witnesses of respondents.

From this record it is clear that there was conflicting testimony—testimony that had to be weighed and balanced. That it was the duty of the supervising conciliation commissioner, who heard the witnesses, saw them on the stand, noticed their demeanor and attitude while testifying, to weigh and balance the weight of their testimony and to determine the value. The supervising conciliation commissioner made that decision. He, after considering the testimony, valued the property at $2000. R. 88 to 90.

Thereafter, respondents petitioned the District Court for a review of the supervising conciliation commissioner's finding of value. R. 90 to 91. The only reason assigned for the review is set forth in paragraph 4 of respondents' petition. R. 91. It reads: "That said order of the Supervising Conciliation Commissioner dated June 16, 1942, errs in that the value so fixed is not the present fair and reasonable market value according to the evidence submitted at said hearing." May we submit that that is insufficient to warrant a review.

The District Court granted respondents' petition. It denied petitioner's motion to dismiss. It then set aside the supervising conciliation commissioner's finding of value

of $2,000 and fixed the value at $4,000. In other words, *it substituted its own judgment for that of its supervising conciliation commissioner, who saw the witnesses and heard them testify.* R. 92 to 98. The Circuit Court of Appeals of the Eighth Circuit affirmed the District Court.

Jurisdiction.

The jurisdiction of this court is sought to be invoked under the provisions of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A. 347A). The petitioner complied with Section 8 (a) of the Act of February 13, 1925; 28 U. S. C. 350. The final judgment of the court below was entered on February 16, 1944.

Reasons Relied On for Allowance of Writ.

1. The decision of the Circuit Court of Appeals of the Eighth Circuit is in conflict with the Bankruptcy Act, 11 USC 203 (s) (3).

2. It is in conflict with the decision *In re Gustave Schafer Company* (CCA6) 163 Fed. (2) 137. It is in conflict with the decisions in *Equitable* v. *Carmody* (CCA8) 131 Fed. (2) 318; *Dunsdon* v. *Federal Land Bank* (CCA8) 137 Fed. (2) 84; *Burnett* v. *Central* (CCA8) 125 Fed. 836; *Rasmussen* v. *Greslay* (CCA8) 77 Fed. (2) 252; *Samuelson* v. *Central* (CCA8) 125 Fed. (2) 838 and *Fordyce* v. *Railway Companies, et al.* (CCA8) 145 Fed. 544 of its own Circuit. It is in conflict with the decisions *In re Stitzer Hotel Company*, 29 Fed. (2) 571 and *Kowalaky* v. *American Employers' Ins. Co.* 90 F. (2) 476.

3. The decision involves a question of great importance and public moment. It involves the proper interpretation and administration of a remedial act of Congress relating to the rehabilitation of farmer-debtors.

4. If the decision is allowed to stand it will continue to cause a multiplicity of conflicting decisions in the District Courts. It will produce uncertainty, confusion and prolonged needless litigation. It will not only defeat the rehabilitation of many farmer-debtors, but, will in effect annul the intent of Congress as expressed in Section 75 (s) (3) of the Bankruptcy Act.

5. A decision of this Court clarifying the above situation is highly desirable not only by farmer-debtors throughout the nation, but, by many courts and members of the legal profession. A farmer-debtor should know that, when he presents his evidence before the conciliation commissioner, the commissioner's decision is final, unless it is found to be clearly erroneous.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court directed to the United States Circuit Court of Appeals, Eighth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in the above entitled cause, being numbered 12,626 on its docket, to the end that this cause may be reviewed and determined by this Honorable Court, as provided for by Section 347A, Title 28, U. S. C. A.; and that the judgment herein of said Circuit Court of Appeals be reversed by this Honorable Court; and for such further relief as this Court may deem proper.

Respectfully submitted,

WILLIAM LEMKE,
Fargo, North Dakota, home address,
Washington, D. C., office address,
Counsel for Petitioner.